IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 36 OF 2004.

Shri John Crasto,
presently lodged in
Central Jail Aguada,
Sinquerim, Goa. .... Appellant.

Versus

State of Goa. .... Respondent.

Smt. Asha Dessai, Advocate for the Appellant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of Reserving the Judgment: 15.2.2005.
Date of Pronouncing the Judgment: 21.2.2005.

J U D G M E N T: (Per Britto, J.)

The accused in Sessions Case No. 51/2000 has filed this appeal against the Judgment/Order dated 6/8th March, 2002 of the learned Addl. Sessions Judge, Panaji convicting and sentencing him under Section 302 I.P.C. to undergo imprisonment for life and to pay a fine of Rs.3000/- in default, to undergo R.I. for a further period of six months.

2. The deceased Premnath alias Babai Govekar and the accused were apparently friends. The deceased normally used to go to sleep in the veranda of " Mama Janet Cafe " situated near Starco junction at Anjuna. On the night of 1st and 2nd July, 2000 till about 2.30 a.m., a.m. the accused was last seen with the deceased drinking together and later quarrelling over a head light at the said veranda of Mama Janet Cafe. The deceased then was seen at about 6.30 a.m. i.e. on 2.7.2000 by one Pravin Salgaonkar lying on the road near Starco junction near the said Mama Janet Cafe and other establishments, with injuries on his head and face. The deceased who had defecated in his underwear was also found with the said head light in his underwear and then his clothes were changed and he was taken to the G.M.C. Hospital where he expired at about 22.25 hrs. on the same day and whereupon a post mortem was conducted upon his dead body on 3.7.00 by P.W.12 Dr. Rodrigues who opined that the death was due to the combined effect of the head and facial injuries consequent to blunt force impact and which were fatal in the ordinary course of nature. The First Information Report was lodged by P.W.2/Sunil Govekar who had reached the scene after receiving information from the said Pravin Salgaonkar and the case was investigated by P.W.18/P.I. Shri Mhamal of Anjuna Police Station.

3. The case of the prosecution, briefly stated, was that between 02.15 to 06.00 hrs. on 2.7.2000 the accused assaulted the deceased with bamboo

danda on the face and head and caused grievous injuries whilst the deceased was asleep, motive for assault being the issue of headlight of the accused which the deceased had concealed in his underwear.

4. There were no eye witnesses to the incident and the case of the prosecution was solely based on circumstantial evidence. The learned Addl. Sessions Judge after considering the circumstances, came to the conclusion that they were proved beyond reasonable doubt , and therefore proceeded to convict and sentence the accused, as aforesaid.

5. The first circumstance sought to be proved by the prosecution is what is known as the circumstance of last seen together, and in order to prove the same, the prosecution had examined as many as six witnesses. P.W.4 Margaret who runs a cold drink shop near the said Starco junction closed the shop at about 1.00 a.m. (on 2.7.2000) after some boys who came there were drinking and dancing to the music of a Maruti van and when she left the shop, she saw the accused and the deceased sitting in the shop of Mama Janet Cafe and both were drinking. P.W.5 Dinkar and P.W.6 Anthony were returning from fishing at about 02.15 hrs. on a motor cycle and they stopped to buy some cigarettes at a shop opposite Mama Janet Cafe when they saw the deceased and the accused drinking liquor. Both stated that the accused told them to tell the deceased to

return his head light which was taken by the deceased, and P.W.5 Dinkar stated that he told the deceased to return the head light since they were friends and that they should not quarrel on minor issue of head light and then they left. P.W.7 Shrikant, at about 7 a.m. On 2.7.00, on being informed by Sanjay, went to the place and saw the deceased on the road wearing only a bluish/black underwear and blood was oozing out of his face and there were injuries on his eyes. He deposed regarding the changing of his underwear by an underwear brought by Sunil from his house as he had defacated. P.W.9 Govekar had seen the accused and the deceased taking drinks near Mama Janet Cafe and this was at about 10.30 p.m. on 1.2.2000 and till about 12.30 or so when they left, both of them were still there. P.W.10 Anthony saw the accused and the deceased talking in a loud voice and this was at about 1.30 hrs. on 2.7.00 when he was returning home after having gone in search of a Doctor. P.W.10 Anthony also stated that the accused was asking the deceased to return his headlight. As far as this circumstance is concerned no dispute has been raised on behalf of the accused nor it could be raised in the light of overwhelming evidence led by the prosecution. The accused merely stated that he had gone to the shop of the said Manuel to purchase cigarettes, but as the shop was closed, he returned home. The learned Addl. Sessions Judge came to the conclusion that the hypothesis of last seen together coupled with the motive for the quarrel to get the head

light back were sufficient circumstances to prove the case of the prosecution beyond reasonable doubt. However, in our view, both the said circumstances are not free from doubt. Firstly, what has been established by the prosecution from the said witness is that the accused and the deceased were seen last together at about 2.15 hrs. However, in this case the deceased was found on the road in semi conscious condition still bleeding by Pravin Salgaonkar and P.W.2/Sunil Govekar and others subsequently at about 6.30 or 7.00 a.m. The theory of last seen circumstance proceeds on the principle that a person who is last found in the company of another, if the latter is found missing, then the person with whom he was last found has to explain the circumstance in which they parted company. In this case the deceased was found at a different place and in a semi-conscious state and bleeding. The age of the injuries have not been proved. Admittedly the deceased was sleeping in the open, in the veranda of the said Cafe and could have been assaulted by any one after the accused and the deceased left each other's company after 2.30 a.m. It is also important to note that P.W.2/Sunil in his first information had stated that he had asked the deceased as to who had beaten him, but he was not in a condition to speak. P.W.2 Sunil had also suspected one Bosco alias Batkar and his three friends as persons who could have assaulted the deceased with a stone on his face and head causing him grievous injuries. Regarding this stone which was

admittedly found near the place where the deceased was found, little more shall be said a little later. It appears that the investigation officer did not conduct any investigation whatsoever in the light of suspicion given by P.W.2/Sunil against the said Bosco alias Batkar. It appears that the first impression of P.W.2 Sunil was that the deceased was assaulted at the place where he was found (and not in the veranda of the said Cafe) and that too with a stone which was found at the scene. The prosecution has not explained whether the said Bosco alias Batkar was interrogated to find out whether he or his friends had a hand in the assault of the deceased. Moreover what was ultimately found in the underwear of the deceased is only one part of the head light. If the quarrel between the deceased and the accused was on account of the said head light, it is rather difficult to believe that the accused after assaulting the deceased would have gone away without the said headlight. After all the accused and the deceased were sitting and drinking together and if the head light was taken by the deceased from the accused and hidden by him, it could have been hidden only on his person which the accused could have found out, after the deceased was assaulted, and taken away with him. Therefore, in our view , both these circumstances are not free from doubt.

6. The second circumstance which has been considered as proved is that the accused was found with injuries on his body. It is not the case of any of

the said witnesses who saw the accused and the deceased quarreling or discussing over the head light that there was any scuffle between them. No doubt the accused was found with some slight injuries like a rub abrasion on the right forearm and yet another abrasion on the upper forehead eye-brow. All abrasions were with scabs formed. The nature of the injuries on the deceased which are predominantly on the face and the head and which according to the prosecution were inflicted by a bamboo danda would rule out the probability that there was any scuffle at all between the deceased and the accused. In fact, it has been stated in the concise statement on the charge sheet that the deceased was assaulted while he was asleep. Considering the nature of injuries on the deceased and on the parts of the body, they were inflicted, this appears to be more probable and if that is so, the injuries found on the person of the accused, having been caused in a scuffle with the deceased has got to be ruled out. That apart, the said injuries are too insignificant to be taken note of in case there was a fight between the deceased and the accused. The accused was stated to be a mechanic and therefore the said injuries are compatible with the nature of the work the accused is required to do. In our view the finding of the said injuries in the given circumstances, does not connect the accused with the alleged crime at all.

7. The third circumstance is the finding of shoes and clothes stated to be

those of the accused with blood stains. This circumstance was sought to be proved through the evidence of P.W.15/Pravin and P.W.18/P.I. Mhamal. The said shoes and clothes are stated to have been seized under a house search panchanama (Exh.39) conducted on 4.7.2000. According to P.W.15 Pravin there were about ten pairs of shoes in the veranda and some parts of vehicles. According to P.W.15 the socks were in the shoes and they found that there were light colour spots on the shoes which appeared to be of blood. According to him they were thereafter taken in the bedroom of the house where there were two cupboards and below the bed there were clothes namely one short pant and a T-shirt of blue colour on which there were reddish spots which appeared to be of blood. There is no whisper in the evidence of the prosecution as to who was in possession of the said house which was searched. The evidence of P.W.15 Pravin does not show whether they had entered the said house, the key of the door being opened by the accused. The prosecution has led no evidence to show whether the said house was in exclusive possession of the accused. All that the prosecution has stated is that the accused stated that he identified the said shoes and clothes as his, and in our view the statement made by the accused in presence of the police that the said articles belonged to him would be clearly inadmissible. This panchanama was not done under the provisions of Section 27 of the Evidence Act. Moreover, the said shoes (MO.5A), T-shirt (MO.6A) and short pant (MO.6B) which were sent to the

Central Forensic Laboratory were found with blood which was disintegrated and of which neither group nor origin could be determined and being so it could not be said that this circumstance at all connected the accused with the murder of the deceased. It is important to note that although seven of the prosecution witnesses saw the accused and the deceased drinking together and some of them saw them quarrelling over the head light, the prosecution made no effort whatsoever to find out the type of clothes or shoes the accused was wearing at that time. In this regard this is what the learned Addl. Sessions Judge observed:

" There is no evidence on record to prove that the shoes (MO.5A) were worn by the accused at the time of the incident. There is also no evidence on record to prove that the T-shirt and short pants (Mos.6A and 6B) were worn by the accused at the time of incident. The blood detected on the above articles, its origin as well as its group is not known. Even if the origin and group was detected it would not have been of much use because the blood group of the deceased as well as of the accused is the same i.e. A-Rh positive. The evidence of P.W.11 Dr. P. Rocha proves the blood group ".

8. However, the learned Addl. Sessions Judge observed that the accused had not explained as to how the shoes and clothes having blood were found in his house and which supported the case of the prosecution. In our view

it was for the prosecution to prove that the said shoes and clothes were worn by the accused at the time they were seen together along with the deceased or for that matter the same were found in exclusive possession of the accused, which aspect the prosecution miserably failed to prove.

9. The last circumstance which has been taken against the accused is the recovery of the danda at the instance of the accused. The prosecution claims to have proved the said recovery under S.27 of the Evidence Act through the evidence of P.W.14/James and P.W.15/P.I. Shri Mhamal. According to P.W.14/James, the accused stated that he had murdered one Babai Govekar. This statement apart from being inadmissible could not have been made by the accused for the simple reason that the deceased died on the next day and not at the time the accused is alleged to have assaulted him. According to P.W.14/James the accused took them to his house and outside his house there was a well and near the rear door of the house the accused showed them the danda. This was on 5.7.00. It is admitted that the house search panchanama was done on the previous day i.e. on 4.7.00 and if the I.O. P.W.18/P.I. Shri Mhamal had gone to search the clothes the accused was wearing at the time of commission of the offence on 4.7.00, it surpasses our imagination as to how P.W.15 Shri Mhamal could not see the danda (MO.7) which was near the rear door through which he had entered the house on the previous day. The said danda (MO.7) was found with

blood disintegrated of which neither group nor origin could be found out. In our view the said recovery appears to be a farce since in normal course of investigation P.I. Shri Mhamal was bound to see the said danda at the back door of the house through which he had entered in search of the clothes the accused was wearing. Although P.W.12 Dr. Rodrigues stated that the injuries on the deceased could have been caused by the danda (MO.7) from its shape and weight, the stone which was seen with blood at the scene as stated by P.W.17 Chandrakant was neither sent to C.F.S.L. nor was shown to P.W.12 Dr. Rodrigues. P.I. Shri Mhamal appears to have taken great care even to find out as to from which place the said stone was lifted and then found at the place where the deceased was lying. P.W.12/Dr. Rodrigues has stated that amongst other injuries there was also a fracture of both sides of maxila and mandible with dislocation of right temporo mandibular joint with flattening of face from right to left. In case the stone with blood stains found at the scene was shown to Dr. Rodrigues to find out whether any of the injuries could be caused by the said stone, the opinion of P.W.12 Dr Rodrigues might have been different. Reverting to the F.I.R., P.W.2 Sunil had suspected that the deceased might have been assaulted with the said stone on his face and head causing him grievous injuries. This suspicion was not ruled out by carrying out necessary investigations in that direction. If the pancha witness could see the place from where the said stone was removed and then with blood stains on it, it

is but obvious that the said stone was used in the commission of the offence, but this aspect was not at all investigated. In such a background it could not be said that recovery of the said danda was a circumstance proved against the accused, free from doubt.

10. Before parting with the judgment, we would like to make certain observations. Generally in all serious cases a sketch of the scene of offence is invariably prepared and this helps the Court to appreciate the evidence in a more meaningful manner. The accused and the deceased were found drinking together in the veranda of Mama Janet Cafe. Learned P.P. Shri Sardessai was able to show us one photograph, amongst some photographs produced by the prosecution, but the said photograph is of a shed and not of the veranda. The deceased is then stated to have been found as per the panchanama on the tarred road at a distance of about 4 metres. Mama Janet Cafe is not shown on the said photographs nor a sketch was prepared by P.I. Shri Mhamal. If blood was seen on the shutter of Mama Janet Cafe, then the same ought to have been seen from the photographs. Learned P.P. Shri Sardessai was in fact unable to explain to our satisfaction whether the scene of offence was the said shed seen on one of the photos or the veranda which was not seen or the road in front of the same which also could not be seen from the photos, where the deceased and the stone were found lying.

11. It is well settled that when a case is based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be first fully proved beyond reasonable doubt and then the circumstances must be conclusive in nature to connect the accused with the crime. In our view none of the circumstances sought to be proved against the accused are either free from doubt or conclusively connect the accused with the alleged crime. Suspicion however strong, can never take the place of legal proof. In our view this was a fit case to give benefit of doubt to the accused.

12. Consequently we allow the appeal and set aside the impugned Judgment/Order dated 6/8th March, 2002 of the learned Addl. Sessions Judge, Panaji, and acquit the accused under S.302 I.P.C. We direct the accused to be set to liberty forthwith in case he is not required in any other case.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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